

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLE M. ADAMIK,

Petitioner,

v.

SAN JOAQUIN COUNTY SUPERIOR
COURT, et al.,

Respondents.

No. 2:24-cv-01889-DAD-JDP (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION DUE TO
PETITIONER'S FAILURE TO PROSECUTE
AND FAILURE TO COMPLY WITH COURT
ORDERS

(Doc. No. 6)

Petitioner Nicole M. Adamik is a county jail inmate proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 24, 2024, petitioner filed the petition initiating this action. (Doc. Nos. 1, 2.) On July 18, 2024, the assigned magistrate judge ordered petitioner to complete an *in forma pauperis* application or pay the required filing fee within thirty days. (Doc. No. 4.) Petitioner did not respond to the court's order. Accordingly, on September 30, 2024, the magistrate judge ordered petitioner to show cause why this habeas action should not be dismissed due to petitioner's failure to pay the required filing fee, to prosecute, and to comply with court orders. (Doc. No. 5.) Petitioner again did not respond to the court's order to show cause.

1 Accordingly, on November 5, 2024, the magistrate judge issued findings and
2 recommendations recommending that this action be dismissed, without prejudice, due to
3 petitioner's failure to comply with the court's orders and failure to prosecute this action. (Doc.
4 No. 6.) The findings and recommendations were served upon petitioner and contained notice that
5 any objections thereto were to be filed within fourteen (14) days after service.¹ (*Id.* at 3.) To
6 date, petitioner has not filed any objections and the time in which to do so has passed.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
9 pending findings and recommendations are supported by the record and proper analysis.

10 Having concluded that the pending petition must be dismissed, the court also declines to
11 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
12 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
13 *Cockrell*, 537 U.S. 322, 335–36 (2003). If a court denies a petitioner's petition, the court may
14 only issue a certificate of appealability when a petitioner makes a substantial showing of the
15 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas
16 relief on procedural grounds without reaching the underlying constitutional claims, the court
17 should issue a certificate of appealability "if jurists of reason would find it debatable whether the
18 petition states a valid claim of the denial of a constitutional right and that jurists of reason would
19 find it debatable whether the district court was correct in its procedural ruling." *Slack v.*
20 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
21 would not find the court's determination that the pending petition must be dismissed to be
22 debatable or wrong. Thus, the court declines to issue a certificate of appealability.

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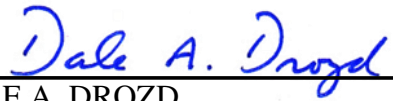
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25 ¹ The service copy of the pending findings and recommendations was served by mail on
26 petitioner at her address of record but was returned to the court as "undeliverable, not here." (*See*
27 Doc. No. 6.) Petitioner was thus required to file a notice of her change of address with the court
28 no later than January 21, 2025. To date, petitioner has not filed a notice of her change of address
or otherwise communicate with the court. Pursuant to Local Rule 182(f), service of documents at
the record address of the party is fully effective, and it is the petitioner's responsibility to keep the
court apprised of her current address at all times.

1 Accordingly,

- 2 1. The findings and recommendations issued on November 5, 2024 (Doc. No. 6) are
3 ADOPTED in full;
- 4 2. The petition for writ of habeas corpus (Doc. No. 2) is DISMISSED, without
5 prejudice;
- 6 3. The court DECLINES to issue the certificate of appealability referenced in 28
7 U.S.C. § 2253; and
- 8 4. The Clerk of the Court is directed to close this case.

9 IT IS SO ORDERED.

10 Dated: April 25, 2025

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12 DALE A. DROZD
13 UNITED STATES DISTRICT JUDGE
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